

*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Arrow Die Cutting, Inc. and Manufacturing Production & Service Workers Union, Local 24. Cases 13-CA-41379-1 and 13-CA-41415-1**

June 24, 2004

**DECISION AND ORDER**

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint. Upon a charge and a first amended charge filed by the Union in Case 13-CA-41379-1 on October 6, 2003 and December 8, 2003, respectively, and a charge and a first amended charge filed in Case 13-CA-41415-1 on October 15, 2003 and December 8, 2003, respectively, the General Counsel issued the consolidated complaint on December 19, 2003, against Arrow Die Cutting, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On April 12, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On April 15, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively stated that unless an answer was filed, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated March 23, 2004, notified the Respondent that unless an answer was filed within 10 days of the date of the letter, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation, with an office and place of business in Broadview, Illinois, has been engaged in the business of manufacturing corrugated cardboard displays.

During the past fiscal year, a representative period, the Respondent sold and shipped from its Broadview, Illinois facility products, goods and materials valued in excess of \$50,000 to an enterprise located within the State of Illinois and that enterprise sold and shipped these goods directly to points outside the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Manufacturing Production & Service Workers Union, Local 24, is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times Raymond J. Fisher III held the position of vice president and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees of this company, excluding office and plant clerical employees, professional, technical, supervisors and guards, as defined in the Act, and employees belonging to other Unions that have collective-bargaining contracts with this company.

Since on or before October 1993, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from December 1, 2000 to November 30, 2003 (the Agreement).

At all times since at least October 1993, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About September 1, 2003, the Union, by letter, requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

Since about October 2, 2003, the Respondent, by Ray Fisher, has failed and refused to bargain with the Union

as the exclusive collective-bargaining representative of the unit.

The Agreement covers terms and conditions of employment of the unit, and was to remain in effect until November 30, 2003, or for consecutive 1-year periods thereafter unless either party gave written notice of its desire to terminate or modify the agreement 60 days prior to the expiration of the Agreement.

Since on or about April 20, 2003, the Respondent, by Ray Fisher, has failed to continue in effect all the terms and conditions of the Agreement described above by, inter alia, failing to pay employees wages as required, failing to provide paid vacation benefits, failing to make required contributions to the health and welfare fund, failing to make required contributions to the pension fund, and failing to remit union dues payments to the Union.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without the Union's consent.

By this conduct, the Respondent has failed and refused to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.<sup>1</sup>

<sup>1</sup> The complaint, which issued on December 19, 2003, alleges that the parties' Agreement "was to remain in effect until November 30, 2003, or for consecutive one-year periods thereafter unless either party gave written notice of its desire to terminate or modify the agreement." This language suggests, but does not specifically allege, that the contract is still in effect. We note that, under existing Board law, postcontract expiration, there is no obligation to abide by the terms of a contractual dues-checkoff provision and failure to do so does not violate Sec. 8(a)(5). *Hacienda Resort Hotel & Casino*, 331 NLRB 665, 666-667 (2000), vacated and remanded sub nom. *Local Joint Executive Board of Las Vegas, Culinary Workers Local 226 v. NLRB*, 309 F.3d 578 (9th Cir. 2002). However, if an employer continues to deduct dues after the expiration of a contract and keeps those sums for itself, it may independently violate Sec. 8(a)(1). See *Talaco Communications, Inc.*, 321 NLRB 762, 763 (1996). Here, the complaint alleges that the Respondent has failed to remit union dues payments to the Union, which suggests that the Respondent actually made the dues deductions. See *Kane Systems Corp.*, 315 NLRB 355, 356-357 (1994) (Board read complaint allegation of failure to remit dues to the union as meaning that the respondent failed "to remit to the Union dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations"). There is no allegation that the Agreement has expired, or that the Respondent's conduct constituted an independent violation of Sec. 8(a)(1). We therefore find that the complaint is alleging that the contract is still in effect and that the Respondent violated the Act by failing to remit to the Union, in accordance with the dues-

## CONCLUSION OF LAW

By failing, since about October 2, 2003, to bargain with the Union as the exclusive collective-bargaining representative of the unit, and by failing, since about April 20, 2003, to continue in effect all the terms and conditions of the Agreement by, inter alia, failing to pay employees wages as required, provide paid vacation benefits, make required contributions to the health and welfare fund and pension fund, and remit to the Union dues payments deducted pursuant to valid checkoff authorizations prior to the expiration of the Agreement, the Respondent has failed and refused to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by, since about October 2, 2003, failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of the unit, and since about April 20, 2003, failing to continue in effect all of the terms and conditions of the December 1, 2000 to November 30, 2003 collective-bargaining agreement by failing to pay employees wages, provide paid vacation benefits, and make required contributions to the health and welfare and pension funds, we shall order the Respondent to bargain with the Union as the exclusive collective-bargaining representative of the unit employees, and to make whole its unit employees for any loss of earnings and other benefits they have suffered as a result of the Respondent's unlawful conduct, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, we shall order the Respondent to make all contractually-required benefit fund contributions that have not been made since April 20, 2003, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 6

checkoff provision, dues payments deducted pursuant to valid dues-checkoff authorizations. Contrast *Advanced Telephonics*, 341 NLRB No. 40 (2004) (on its face complaint alleged that contract had expired and that respondent ceased remitting to the union dues payments deducted from employee paychecks).

(1979). The Respondent shall also reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981).<sup>2</sup>

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing to remit union dues payments to the Union as required by the collective-bargaining agreement, we shall order the Respondent to remit to the Union dues payments deducted pursuant to valid checkoff authorizations prior to the expiration of the Agreement, with interest as prescribed in *New Horizons for the Retarded*, supra.

#### ORDER

The National Labor Relations Board orders that the Respondent, Arrow Die Cutting, Inc., Broadview, Illinois, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Manufacturing Production & Service Workers Union, Local 24, as the exclusive collective-bargaining representative of the employees in the following unit:

All production and maintenance employees of this company, excluding office and plant clerical employees, professional, technical, supervisors and guards, as defined in the Act, and employees belonging to other Unions that have collective-bargaining contracts with this company.

(b) Failing and refusing to continue in effect all of the terms and conditions of the December 1, 2000 to November 30, 2003 collective-bargaining agreement by failing to pay employees wages, provide paid vacation benefits, make required contributions to the health and welfare fund and pension fund, and remit to the Union dues payments that were deducted pursuant to valid checkoff authorizations prior to the expiration of the Agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of its refusal since April 20, 2003, to continue in effect all of the terms and conditions of the collective-bargaining agreement, with interest, as set forth in the remedy section of this decision.

(c) Make all contractually-required health and welfare and pension fund contributions that have not been made since April 20, 2003, including any additional amounts due the funds, and reimburse unit employees for any expenses ensuing from its failure to make the required payments, with interest, as set forth in the remedy section of this decision.

(d) Remit to the Union dues payments deducted pursuant to valid checkoff authorizations prior to the expiration of the collective-bargaining agreement that have not been remitted since April 20, 2003, with interest, as set forth in the remedy section of this decision.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Broadview, Illinois, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice

<sup>2</sup> To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

to all current employees and former employees employed by the Respondent at any time since April 20, 2003.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 24, 2004

---

Wilma B. Liebman, Member

---

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

CHAIRMAN BATTISTA, dissenting in part.

I would not grant summary judgment with respect to the alleged failure to remit union dues.

The complaint alleges the existence of a contract until November 30, 2003. Further, although the complaint is unclear in this respect, my colleagues construe the complaint to allege that the contract continued after that date. The complaint also alleges that the Respondent failed to adhere to the contract. I assume *arguendo* that my colleagues are correct in these respects. Thus, the complaint, coupled with admission through nonanswer, yields the fact that the Respondent failed to adhere to the contract at all relevant times. Of course, this would mean that the Respondent did not deduct the Union dues. And yet, my colleagues' finding of a violation is based on the asserted fact that the Respondent *did* deduct the dues.

Concededly, the complaint could be read to allege that the Respondent adhered to some of the terms of the contract, but did not adhere to others. Under this view, the Respondent deducted the union dues and failed to remit them to the Union. However, the complaint allegation is far from clear, and there is no express allegation that the Respondent adhered to the checkoff clause of the contract.

My colleagues rely on *Kane Systems Corp.*, 315 NLRB 355 (1994). The case is clearly distinguishable. In that case, the complaint clearly alleged that the contract was in effect and that the employer failed to adhere to it. The employer filed an answer which expressly admitted retention of the moneys, and explained that the nonpayments were caused by cash flow shortages. In sum, there was no question but that the employer de-

ducted the money and kept the money for itself. As discussed above, that is not the situation here.

In sum, because of the several ambiguities in the relevant allegations of the complaint, I would not grant summary judgment as to these allegations. However, my denial of summary judgment is without prejudice to a General Counsel effort to amend the complaint. The amendment would clarify the dates when the contract was in effect, the specific contract clauses to which the Respondent adhered and those to which it did not adhere, and whether the Respondent deducted dues and failed to remit same.

Dated, Washington, D.C. June 24, 2004

---

Robert J. Battista, Chairman

NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the

National Labor Relations Board

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain with Manufacturing Production & Service Workers Union, Local 24, as the exclusive collective-bargaining representative of the employees in the following unit:

All production and maintenance employees of our company, excluding office and plant clerical employees, professional, technical, supervisors and guards, as defined in the Act, and employees belonging to other Unions that have collective-bargaining contracts with us.

WE WILL NOT fail and refuse to continue in effect all of the terms and conditions of the December 1, 2000 to November 30, 2003 collective-bargaining agreement by

failing to pay employees wages, provide paid vacation benefits, make required contributions to the health and welfare fund and pension fund, and remit to the Union dues payments deducted pursuant to valid checkoff authorizations prior to the expiration of the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment, and reduce to writing any understanding reached, and sign the agreement.

WE WILL make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of our refusal since April 20, 2003, to continue in

effect all of the terms and conditions of the collective-bargaining agreement, with interest.

WE WILL make all contractually-required health and welfare and pension fund contributions that have not been made since April 20, 2003, including any additional amounts due the funds, and WE WILL reimburse unit employees for any expenses ensuing from our failure to make the required payments, with interest.

WE WILL remit to the Union dues payments deducted pursuant to valid checkoff authorizations prior to the expiration of the collective-bargaining agreement that have not been remitted since April 20, 2003, with interest.

ARROW DIE CUTTING, INC.